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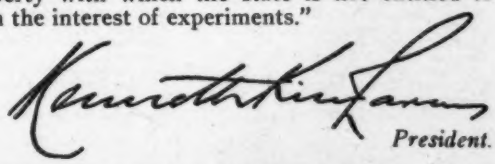
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Sociologic and Economic Experimentation by a State

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the Federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This [United States Supreme] Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious and unreasonable. We have power to do this because the due process clause has been held by the court applicable to matters of substantive law as well as to matters of procedure. But in the exercise of the high power we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold." Thus, Mr. Justice Brandeis in his dissenting opinion in New State Ice Co. vs. Liebmann, decided by the United States Supreme Court on March 21, 1932. In the prevailing opinion it is said that it is not necessary to challenge the authority of the states to indulge in experimental legislation but—"The principle is imbedded in our constitutional system that there are certain essentials of liberty with which the state is not entitled to dispense in the interest of experiments."



President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for May

Talks on Foreign Corporations

Whether or not an unqualified foreign corporation is doing business in a particular state in taking title to real property is a complicated question, and, of course, this question can only be definitely answered by reference to the statutes and decisions of the particular state involved. Statutory provisions in a number of instances limit or restrict the owning of real estate by foreign corporations, as to amount and purpose, but, assuming that the foreign corporation has complied with these restrictions, there is the further question of whether such ownership brings the corporation under the general statutes relating to qualification of foreign corporations; and, in the latter case, the intent governing the acquisition, and the use to which the real estate is put is largely determinative. As a general rule a single act does not constitue doing business, but a single purchase of real estate may require qualification if it is one of a series of acts involving business in the state. The care and protection of unused real estate, and the payment of taxes thereon, would not as a rule be considered doing business; but should the foreign corporation lease the property and derive a continued profit therefrom over a period of time the situation would be different. The purchase, and improvement of real estate, with the intent to sell it at a profit would undoubtedly require qualification.

Naturally, these statements are general, and before applying them the statutes and decisions must be consulted. For example, the Wisconsin statute provides that no foreign corporation shall "acquire, hold, or dispose of property in this state," before compliance with the foreign corporation laws. Consequently, it would seem that the mere taking of title to land in Wisconsin would require qualification, for as the Supreme Court of the United States said, (Munday vs. Wisconsin Trust Company, 252 U. S. 499) "The title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situated."

Another important point for consideration is the attitude title guarantee companies may take toward real estate held by unqualified foreign corporations. It is well known that an acceptable title guarantee is now an important part of almost every real estate transaction. Should an unqualified foreign corporation purchase real property in a state without ascertaining the attitude of the local title companies regarding property held by such corporations, it might find itself put to considerable difficulty in disposing of the property, even though the original acquisition and the subsequent use did not constitute doing business. Whether or not title companies look upon qualification as necessary in such cases should always be determined.

All matters in connection with the acquisition of real estate by a foreign corporation must be carefully considered for it is important that the corporation gets and is able to pass on good title.

Domestic Corporations

Arkansas.

Liability of corporation on notes executed by president and secretary without authority thereunto expressly conferred. We do not go into the merits here wherein the Supreme Court of Arkansas reverses the judgment of the court below and holds that "the appellant bank is entitled to recover its debt." The court says, citing cases: "It is well settled as a general proposition that the president and secretary of a corporation are not empowered to bind it by their signatures to commercial paper unless such authority is expressly conferred by the charter or by its board of directors. This rule, however, is subject to important qualifications, one of which is that where the act is performed by the officers through whom the corporation usually functions and results in benefit to the corporation, it will be bound where the transaction was had under circumstances by which knowledge might be imputed to it. Where the unauthorized act of officers is clearly beneficial to the corporation, slight circumstances will be sufficient to impute knowledge and will effect a ratification of that act. Especially is this true where the other party to the transaction has acted in good faith and a repudiation of the transaction will result in harm and disadvantage to him." Cleburne County Bank et al. vs. Butler Gin Co. et al., 42 S. W. (2d) 769. Brundidge & Neelly, of Searcy, for appellants. Miller & Yingling, of Searcy, and Cockrill & Armistead, of Little Rock, for appellees.

California.

Liability of directors of corporation on debt incurred in excess of subscribed capital stock. As said, here, by the District Court of Appeal, First District, Division 1, California, "the repealed statute (Section 309, Civil Code, repealed in 1929 and at that time reenacted, carrying different provisions) imposed a liability against directors of corporations for incurring debts beyond their subscribed capital stock. The statute provided in express terms that such directors were in their individual and private capacity jointly and severally liable to the corporation and to the creditors thereof to the full amount of the debt contracted." The court below granted the motion for a nonsuit on the ground of repealer. Reversing the judgment the court says: "It is now conceded by respondents, as indeed it must be, that Section 404 of the Civil Code contains, as claimed by appellant, a general saving clause preserving the rights to creditors, accruing under the repealed section prior to its repeal. It is not disputed that the liability here sought to be enforced was thus created. Hence, under its provision, the repeal of Section 309 of the Civil Code in 1929 (St. 1929, p. 1266, Section 12) did not abate or impair plaintiff's alleged cause of action." Robinson vs. Farnsworth, 4 P. (2d) 210. L. L. James and E. H. Rowe, for appellant; T. M. Foley, for respondent Thompson: all of San Francisco.

Separate entity of a corporation not to be disregarded, generally. The California District Court of Appeal, Third District, says: "In any event, the rule of law regarding a so-called 'one man corporation' or as sometimes called a 'corporate alter ego' is now definitely announced. The law is well settled that, in order to cast aside the legal fiction of a distinct corporate existence, it must appear that the corporation is the business conduit and alter ego of its stockholders, and that to recognize it as a separate entity would aid in the consummation of a wrong. In other words, not only must it appear that one man or two men own the stock and control the policies, but it must also be shown that there is such a unity of interest and ownership that the individuality of such corporation and such person or persons has ceased; and it must further appear from the facts that the observance of the fiction of separate existence would, under the circumstances, sanction a fraud or promote injustice. No such condition is disclosed in the instant case, nor is any element of fraud or injustice apparent." Davis vs. Perry et al., 8 P. (2d) 514. Appearances: Benjamin Hoyt Sheldon, of Los Angeles; Henry C. Bodkin and W. J. Ford, both of Los Angeles.

Georgia.

Purchase by corporation of its own stock; "minimum capital stock." Action by the trustee in bankruptcy of a bankrupt corporation against certain former stockholders charging them with liability for the amount of moneys paid to them by the corporation for their stock sold by them to it about two years before the corporation was adjudged bankrupt. The United States Circuit Court of Appeals, Fifth Circuit, reverses the court below which granted partial relief (there was a cross-appeal), and holds that the asserted claim is to no extent sustainable. It is stated that there was nothing disclosed to warrant relief under the Bankruptcy Act, and "there was no finding that any party to the transaction intended to defraud subsequent creditors of the bankrupt, and there was no finding that at the time of the bankruptcy the bankrupt owed any debt which was in existence when the challenged transfer was made." The bankrupt was incorporated with a capital of $10,000, with the privilege of increasing the capital to $100,000; it had been increased to $30,000. Concerning the purchase of its stock by the corporation the court says: "Under the law of Georgia, that was permissible, in the absence of fraud, and if the transaction did not have the effect of reducing the outstanding capital stock of the corporation below the minimum stated in the corporation's charter. What is meant by 'the minimum capital stock' is the lowest amount named where the charter states that the capital shall be a stated sum with a privilege of increase." Kaminsky et al. vs. Phinizy, 54 F. (2d) 16. Herschel P. Cobb and O. E. Bright, both of Savannah, for appellants and cross appellees. W. K. Miller, of Augusta, for appellee and cross appellant.

Illinois.

Compensation of directors of corporations as directors and as officers. "It is well established that the directors of a corporation cannot receive compensation for the performance of their duty as directors or as officers of the corporation unless compensation is provided for by a by-law or resolution of the board of directors before the services are rendered. This rule applies to a director who is the president, vice-president, secretary, or treasurer of a corporation, but it does not apply to a director or officer who has performed necessary services entirely outside the scope of his duties as a director or officer, at the instance of the officers of the corporation having general authority over the affairs of the corporation, under an express promise of payment for such services or under such circumstances as raise an implied promise to pay for them." So says the Illinois Supreme Court in reaching its conclusion, here. Reversing the court below, payment is directed under the Workmen's Compensation Act for the death of the secretary-treasurer of a corporation, killed while away from the plant and office, endeavoring to collect an account, by direction of the president. The court says that it has not heretofore had occasion to advert to the distinction between higher officers of a corporation and its workmen; that the distinction has not been obliterated and exists (in the application of the statute here involved); but that "we cannot assume that [the secretary-treasurer] was charged by his office with the duty of going to the place of business of the debtor to collect this account;" and, so, that he was an "employee," engaged in his duty as such, at the time of the accident. Stevens vs. Industrial Commission et al., 179 N. E. 102. West & Eckhart and Sanders, Childs, Bobb & Wescott, all of Chicago (William L. Bourland and John Neal Campbell, both of Chicago, of counsel), for plaintiff in error. John A. Bloomingston, of Chicago, for defendants in error.

Iowa.

On restricting alienation of stock in a corporation. The charter of the Iowa corporation here involved (true—a local telephone company) provides that "any person may become a stockholder * * * provided such person be recommended by any two directors." A stockholder may sell his stock to another stockholder "upon approval by the Secretary," merely. A stockholder desiring to sell his stock to one not then a stockholder (and, in fact, one connected with another telephone company), but being unable to procure the consent of two directors, sought mandamus to compel transfer on the books without such consent. Mandamus denied; the Supreme Court of Iowa affirms. The court says, *inter alia*, that the state granted the charter not finding anything in the articles contrary to law or public policy and is making no claim in that direction now; that stockholders, within reasonable limitations, should have some measure of choice in taking in new stockholders; that "manifestly, control

and management are important considerations in the matter of ownership of corporation stocks. In a small local company, such as the one under consideration, the personal equation might easily be of vast importance to the interested parties"; that the stockholder knew of the restrictions and consented thereto when he acquired his stock and the recorded articles are held to have been known to the prospective purchaser. And it is held: "The public policy of the state is governed by its statutes and, in the absence of a legislative expression, then by the decisions of the court. As previously noted, there is no statutory prohibition in Iowa upon restrictions in articles of incorporation. The only statute on the subject (now Section 8341, (4), Code of 1931) has, inferentially at least, been passed upon by the court as not a restriction. We find no decisions of this court holding such restrictions contrary to public policy or void." Mason et al. vs. Mallard Telephone Co., 240 N. W. 671. W. H. Morling, of Emmetsburg, for appellants. A. J. Burt, of Emmetsburg, and A. J. Shaw, of Pocahontas, for appellees.

Massachusetts.

Uniform Stock Transfer Act of state has no application to stock of corporation organized under the laws of another state unless such other state also has adopted the Uniform Stock Transfer Act. A Boston bank placed with a Boston broker an order to purchase 100 shares of stock of a certain corporation; the order was transmitted to a New York broker, who made the purchase. The Boston broker notified its customer of the purchase. The customer instructed the broker to have the stock transferred to his name, to then endorse in blank and deliver; it advised the broker, also, that it had credited to the broker's bank account with it the amount of the purchase price plus commissions. Before delivery from New York financial embarrassment overtook the Boston broker; learning of this the New York broker made delivery to the trustee in bankruptcy (of the Boston broker). The customer (the Boston bank) filed a petition with the referee for reclamation of the stock; the referee ordered delivery; a United States District Court affirms, and now the United States Circuit Court of Appeals, First Circuit, affirms. It was contended that under the Massachusetts Uniform Stock Transfer Act no title to the stock in question had ever passed to the customer bank. The court says: "but unless it appears, as it does not in this case, that such act is operative in the state where the [corporation whose stock is in question] was organized, it has been repeatedly held by the Massachusetts court that the Uniform Stock Transfer Act of Massachusetts does not apply to shares of stock of a foreign corporation, and an assignment of the certificate of stock was not necessary in order to transfer title." Norman vs. Bancroft Trust Co., 55 F. (2d) 91. Edwin G. Norman and Arthur S. Houghton, both of Worcester, for Norman, Trustee. John J. Moynihan (of Mahoney & Moynihan), of Worcester, for Bancroft Trust Co.

Minnesota.

Power of ordinary business corporation to loan money; depositing surplus funds in bank; ultra vires acts. Incident to reaching a decision here it was necessary for the court to consider whether or not a loan of money by a Minnesota corporation was ultra vires the corporation and so, in effect, a voidable contract. The Supreme Court of Minnesota, sustaining the corporation's lien founded on the loan, says: "While it has been stated that, as a general rule, a corporation has no power to loan its money, unless authorized so to do by its charter, the power so to do need not necessarily be expressly given by charter. Neither plaintiff's charter nor the law under which it is incorporated contains any provision prohibiting plaintiff from loaning its money. There is not much difference between loaning money and selling goods on credit, a power undoubtedly possessed by plaintiff [business: buying and selling lumber and fuel]. In either case credit is extended. If plaintiff had money on hand, might it not deposit such money in a bank on time certificates so as to receive interest thereon, a loan of money to the bank? We are not prepared to say that a loan of money by plaintiff to an individual, or a bank, is clearly ultra vires." Regarding ultra vires contracts generally the court says that Minnesota and a number of the other states abide by the rule laid down in the Seymour Case (55 N. W. 907) which it quotes as follows: "But there are few rules better settled or more strongly supported by authorities, with fewer exceptions, in this country, than that when a contract by a private corporation, which is otherwise unobjectionable, has been performed on one side, the party which has received and retained the benefits of such performance shall not be permitted to evade performance on the ground that the contract was in excess of the purpose for which the corporation was created." Benson Lumber Co. vs. Thornton et al., 240 N. W. 651. Oscar Hallam, of St. Paul, and John I. Davis, of Benson, for the creditor corporation.

Missouri.

Effect of forfeiture of corporate privileges by secretary of state for failure to file annual statements, etc. Here, a Missouri corporation's charter was revoked by the secretary of state in 1921 for failure to comply with the law relating to annual registrations and the filing of annual statements, etc. There has been no reinstatement. Years after the forfeiture, certain stockholders, on first discovery of the fact, brought this action against the corporation and those who were directors at the time of forfeiture, for an accounting and an injunction restraining alienation of corporate assets. Judgment below for plaintiffs; the St. Louis Court of Appeals affirms. The court says: "Just what is the status of a corporation, and what are the powers of a court of equity with respect to the disposition of its corporate assets and business, after its corporate privileges have been declared forfeited by the secretary of state, subject to rescission * * * has

never been decided by our Supreme Court, so far as we are advised." It is stated that "it is difficult to read the provisions of the statute without arriving at the conclusion that it was the intention of the Legislature that the act of the secretary of state should operate as a dissolution of the corporation * * * subject only to the right of rescission and reinstatement * * *." "It will be observed that these sections give the trustees full power to wind up the affairs of the corporation and make distribution of its assets, which, our Supreme Court holds, is tantamount to a dissolution of the corporation." The statute is silent as to the length of time permitted a corporation to take steps looking to reinstatement but the court considers that here, in view of the long time that has elapsed since the act of forfeiture, the privilege should be regarded as abandoned. "The constitutionality of the statute empowering the secretary of state to declare a forfeiture of a corporate charter has never been passed on by our Supreme Court." The constitutionality of the statute was not questioned here; dissolution is not asked for; on the contrary the petition expressly alleges that the corporation has already been dissolved. The court concludes: "However, it will suffice to say here we deem the court clearly within its jurisdiction in giving the judgment complained of." Estel et al. vs. Midgard Inv. Co. et al., 46 S. W. (2d) 193. John A. Hope, of St. Louis, and Clyde Williams, of Hillsboro, for appellant. Chas. A. Killian and P. B. Hood, both of Perryville, for respondents.

Nebraska.

Corporate existence of corporation may not be questioned by one who dealt with entity as a corporation. Action by an Iowa corporation (as alleged in its petition) against a Nebraska customer; set-off and counterclaim claimed and made; it was urged that "the plaintiff was not in fact a corporation for that its life had expired prior to the execution of the contract by operation of law" and that the one against whom the counterclaim was made was doing business under the corporate name as a trade name and that he is the real plaintiff in interest. The Supreme Court of Nebraska, affirming the judgment below striking the set-off and counterclaim, says that the argument of the defendant on this last mentioned contention "is plausible and persuasive," but that the court is confronted with certain well-established principles of law. "When a party contracts with an imperfectly organized corporation, he is estopped to deny its corporate existence and is precluded from recovering from its members individually as if they were partners. * * * Since the defendant entered into this contract with the corporation and has dealt with the plaintiff as a corporation, he is estopped to deny its corporate existence, after having received the benefits of the contract. The defendant has no just complaint because he now finds himself in the position which he thought he was in when he entered into the contract." American Gas Construction Co. vs. Lisco, 241 N. W. 89.

COSTLINESS OF "AMA

The belief on the part of some corporation officials that corporate representation in a state by an amateur—that is, by someone, perhaps one of the company's regular business employees or sales representatives, who is untrained in the technicalities of corporation taxes, regulations and similar matters—the belief of some corporation officials that such representation is cheap, sometimes takes on a ghastly aspect.

Not long ago, one corporation represented in a certain state by the manager of its branch in that state suddenly found that its license to do business in the state had been revoked for failure to file a return and pay its tax the previous year. The company's attorney had hastily to get a reinstatement, as the business done in the state was large and important, settling the legal penalties without argument. Then, when all was safe again, an investigation was made of how the delinquency came about. It was found that a form for the tax return had been received at the branch office, but because its arrangement—made, as so many government forms are, for convenience of state employees and not in the way a similar business form would be arranged—looked

EUR'' REPRESENTATION

to the branch manager's secretary like a RECEIPT for the tax, and was SO FILED!

In a large number of cases, a business employee of the company has taken a state notice to be circular matter (many times it does look like a circular, and an uninteresting one) and carelessly thrown it away.

Contrast such mistakes being made every day by "amateur" corporate representation with this "professional" method:

The Corporation Trust Company represents a certain New York company in a New England state. At 9:05 on a recent morning papers were served in connection with a petition for an injunction restraining the company from proceeding with certain work it was engaged in. The hearing on the injunction was set for 10 o'clock that morning. The Corporation Trust Company's representative examined the papers closely, sensed the importance of the matter and quickly got the New York Office by telephone. The New York Office telephoned the company's attorneys and as a result by 9:25 arrangements had been completed for an appearance to be made for the company's officers in the New England court proceedings.

RUST COMPANY SERVES ATION MATTERS

ration Trust Company then has them filed and recorded for him at the required places without an hour's unnecessary loss of time.

After qualification this company furnishes the agent required in the state for service of process and keeps the corporation's attorney informed of all taxes to be paid and reports to be filed by his client to maintain its corporate standing in the state; informs him promptly of any changes in law, rulings by officials, or decisions of courts, that affect his client's interests.

In addition, but without additional charge, The Corporation Trust Company furnishes to the attorney, or upon his request, to the corporation itself (sending to that officer or employee of the company designated by the attorney) its Corporation Tax Service, State and Local. This Service presents, in loose-leaf form kept constantly up-to-date, complete information in regard to the Franchise or License Taxes, the Income Taxes, the General Property Taxes, and any other taxes, state or local, applying to ordinary business corporations, in each state in which the company is represented. For each such tax this Service shows of what corporations the tax is required, exemptions, basis of tax rate, when to be paid and to whom, how to obtain extensions, how and where to appeal from the assessing official or body, reports and returns required and where and when to be filed, and all the applicable official opinions, rulings, definitions and court decisions, and text of all law sections governing.

Allen G. Fisher and Chas. A. Fisher, both of Chadron, for appellant. E. D. and F. A. Crites, of Chadron, for appellee.

New York.

Surety bond for corporation subsequently merged does not cover possessor corporation after merger. Two questions are raised here. A department store entered into a contract with a distributing or delivery corporation by which the latter obligated itself to deliver packages for the former, collect charges thereon, and turn over proceeds. As a part of the contract a surety bond running to the store was required of the distributor. Subsequently the distributor corporation changed its name. Thereafter the distributor corporation was merged with another existing corporation there being complete absorption and loss of identity of the merged corporation. Is the surety liable on the bond: (1) after the change of name; (2) after the merger? The New York Supreme Court, Appellate Term, First Department, answers the first question in the affirmative—"such a change of name did not result in any change in the identity of the corporation for which the defendant [surety company] was bound." The second question is answered in the negative: "I find nothing in the statute (Stock Corporation Law, Section 85) which applies here. It is the assets and liabilities of the merged corporation which, by operation of law, are transmitted to its successor. The statute does not define the effect upon a surety of a merger of the principal. * * * The statute concerns itself with the devolution of the interests of the parties to the contract—not with extraneous contingencies which may vitiate their rights. Here the default of the principal was an indispensable condition of liability under the defendant's contract of indemnity. The identity of the principal was extinguished on [the date of the merger]." Worth Corporation vs. Metropolitan Casualty Ins. Co., 255 N. Y. Sup. 470. Sheppard, Jones & Seipp, of New York City (John S. Sheppard and Henry G. Seipp, both of New York City, of counsel), for appellant. Henry L. Ughetta, of New York City (Leo F. Potts, of New York City, of counsel), for respondent insurance company.

North Carolina.

Liability of directors, because of negligence, on account of loss suffered through dealing with corporation. Civil action against directors of a corporation (in hands of receiver) on ground that because of their negligence the corporation was "wrecked * * * thereby causing loss and damage to the plaintiff." The Supreme Court of North Carolina finds no error in the judgment below for plaintiff. The court says: "Directors are not guarantors of the solvency of a corporation, nor are they insurers of the honesty and integrity of the officers and agents. Neither are they required to personally supervise all the details of business transactions." The rule is stated to be: "Directors and managing officers of a corporation are deemed by

the law to be trustees, or quasi trustees, in respect to the performance of their official duties incident to corporate management, and are therefore liable for either wilful or negligent failure to perform their official duties." Continuing, the court says: "Ordinarily, of course, directors would not be charged with notice by virtue of desultory, occasional, or disconnected acts of mismanagement or fraudulent transactions; but in cases where mismanagement and fraud has been persistently and continuously practiced for substantial periods of time a jury must determine whether the directors, in the exercise of that degree of care which the law imposes, should have known of such practices and that persons dealing with the corporation would be injured thereby. The court is of the opinion that there was sufficient evidence to be submitted to the jury, and consequently the judgment must be affirmed." Minnis vs. Sharpe, et al., 162 S. E. 606. W. S. Coulter and M. C. Terrell, both of Burlington, Brooks, Parker, Smith & Wharton, of Greensboro, and H. J. Rhodes, of Burlington, for certain appellants. Cooper A. Hall, of Burlington, and Shuping & Hampton, of Greensboro, for appellee.

Liability of directors and officers for losses to corporation due to breaches of legal duty. The Supreme Court of North Carolina says: "It is an established principle that the directors and managing officers of a corporation, though ordinarily not responsible for mere errors of judgment or slight omissions, are to be considered and dealt with as trustees, or quasi trustees, in respect of their corporate management, and in proper cases may be held liable for loss or depletion of the company's assets due to their wilful or negligent failure to perform their official duties. [Cases cited.] It is said in the case last cited [97 S. E. 743] that when they accept these positions of trust they are expected and required to give them the care and attention that a prudent man should exercise in like circumstances and charged with a like duty; that if there is a breach of legal duty in this respect, causing a loss of the company's assets, the corporation may sue; and that in case of insolvency the action may be maintained by the receiver." Here the judgment for the defendant officers—nonsuit, was affirmed. Gordon et al. vs. Pendleton et al., 162 S. E. 546. Ward & Grimes, of Washington, N. C., for appellants. Ehringhaus & Hall, J. H. LeRoy, Jr., and McMullan & McMullan, all of Elizabeth City, for appellees.

Oklahoma.

Parol evidence, absent written minute, unavailing to sustain alleged contract of employment of director as officer. Plaintiff, one of the directors of a corporation, sued the corporation for the amount alleged to be due him on account of services rendered as managing officer under an alleged oral contract or agreement entered into at a meeting of the directors, of which there is no written corporate record. The Oklahoma corporation law requires the keeping of a record

of all business transactions. The Supreme Court of Oklahoma reverses the court below which found for the plaintiff, and, remanding, directs dismissal. The court emphasizes that rights of third parties are not here involved. After discussion the court says: "Having arrived at the conclusion that a corporation for profit must speak by its record insofar as its business transactions with its directors are concerned, and that its record must embrace every act done, directors of a corporation for profit cannot recover compensation for services rendered corporation as officers in absence of authority shown by corporate records for payment. * * * If the records of a corporation for profit fail to show a by-law, resolution or minutes fixing the salary or compensation of a director therein as a managing officer of such corporation was duly adopted as required by the statutes of this state, parol evidence is not admissible to show that it was." Kirk Oil Co. vs. Bristow, 7 P. (2d) 682. Champion, Champion & Fischl, of Ardmore, and Rainey, Flynn, Green & Anderson, of Oklahoma City, for plaintiff in error. George Trice and Denver N. Davison, both of Ada, and George N. Otey, of Ardmore, for defendant in error.

Texas.

Value of "property actually received" for stock purposes. The Texas Constitution (Art. 12, Section 6) provides: "No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void." Here, a parcel of land was paid in for stock in connection with the organization of a corporation. For the excess of the determined value of the land over the par value and stated value, respectively, of the preferred par value shares and non par value common shares issued therefor, a promissory note was given by the corporation. Bankruptcy; note holder presents claim thereon; objected to by trustee, referee allows; U. S. District Court affirms allowance; U. S. Circuit Court of Appeals, Fifth Circuit, affirms. The principal contention was that the land was much over-valued and hence the issue of the stock and the giving of the note therefor was violative of the quoted constitutional provision. Absolute good faith and a fair valuation of the land was found; there was no fraud and no concealment. The court says: "The secretary of state accepted the value given the property, and his decision is prima facie proof of its value." And: "In construing the article of the Constitution above set out, the Texas courts have adopted the rule that the section does not require that a corporation shall receive equal value, dollar for dollar, in property received in exchange for stock, and it is sufficient if the amount received bears some reasonable approximation to the amount of indebtedness." Park vs. Compton, 55 F. (2d) 80. W. L. Eason and Allen V. McDonnell, both of Waco, for appellant. W. W. Naman and Hilton E. Howell, both of Waco, for appellee.

Foreign Corporations

Alabama.

Installing or setting up machinery sold in knocked down condition in interstate commerce. Suit on a note given in connection with a contract made in Michigan covering the sale of a heating plant, delivered f. o. b. Michigan, by a corporation foreign to Alabama and not qualified in Alabama, to an Alabama customer. Contention that the note was void as against public policy; judgment for foreign corporation plaintiff affirmed by Alabama Court of Appeals; Alabama Supreme Court denies petition for writ of certiorari (139 So. 297). A separate contract had been entered into by the customer with a third party for the installation of the heating plant; but, says the Court of Appeals, there was "no evidence connecting plaintiff with that contract." And continuing: "In this connection, however, we cite the case of Puffer Mfg. Co. vs. Kelly, 198 Ala. 131, 73 So. 403, as stating the rule governing sales in this state by foreign corporations. In line with that case the excerpts from the charge of the court, 'The mere fact that it requires labor to set it up would not make it a local contract,' and 'If the chief business is to sell and accept orders and ship same knocked down then the assembling alone would be a mere incident' were free from error." Vest vs. Night Commander Lighting Co., 139 So. 295. Lynne & Lynne, of Decatur, for appellant. Melvin Hutson, of Decatur, for appellee.

New Jersey.

Unlicensed foreign corporation not doing business in state not amenable to suit for damages for personal injuries. Action against a Connecticut corporation, not licensed to do business in New Jersey, on account of damages for personal injuries alleged to have been received as a result of negligence on the part of one of the corporation's salesmen. The Supreme Court of New Jersey finds that the corporation was not "doing business" in the state. "It maintains no plants in New Jersey, carries no bank accounts, and sells and delivers no goods here. All of its business is carried on through jobbers who make their purchases at the home office. Occasionally salesmen come into this state to solicit orders and to display and demonstrate their merchandise. All orders taken are subject to acceptance or rejection at the main office where all collections are made." It was conceded that if the action had been in contract process was not well served in this case since the defendant was not doing business in the state, but it was suggested that since the action is to recover damages for an injury due to a tort another rule applies, though no authorities were cited. The court is not impressed by the suggestion and rules that "since the defendant corporation was not doing business in this state, nor did it expressly or by implication consent to the jurisdiction, the service of process must be set aside." McClelland vs. Colt's Patent Fire Arms Mfg. Co., 158 A. 329. Chandless, Weller & Selser,

of Hackensack (Ralph W. Chandless, of Hackensack, of counsel), for plaintiff. Pitney, Hardin & Skinner, of Newark, for defendants.

Wisconsin.

Gathering information, merely, does not constitute "doing business." Here, a New York corporation, not licensed to do business in Wisconsin, engaged in furnishing engineering and business reports and consulting service, to serve as a basis for financing and other purposes, entered into a contract, in Chicago, with a Wisconsin customer, in the line of its business, calling for a report as to the advisability of an expansion program. To this end the New York corporation sent its representatives to Milwaukee to gather facts (from third parties) and to make a business survey; having done so, and following analysis, its report was mailed to the Wisconsin client. Action is on the contract; defense—plaintiff, a foreign corporation, doing business in Wisconsin without being licensed; nonsuit below; on appeal the Supreme Court of Wisconsin reverses and remands for a new trial. The court says: "The case presented is simply one where a contract was entered into between the parties beyond the borders of the state, by which the plaintiff agreed to furnish the defendant its business judgment and advice, and where the plaintiff proceeded in its own way to collect data and information upon which a sound judgment could be based, and, after duly informing itself concerning all relevant matters, it mailed its report and advice to the defendant at Milwaukee. We see nothing in this which constitutes the transaction of business in this state within the meaning or contemplation of section 226.02 (Wisconsin Stats. 1929)." Ford, Bacon & Davis, Inc. vs. Terminal Warehouse Co., 240 N. W. 796. Miller, Mack & Fairchild, of Milwaukee, for appellant. Saltzstein & Scheinfeld, of Milwaukee (Olwell & Brady, of Milwaukee, of counsel), for respondent.

Taxation

Florida.

1931 franchise tax act held valid. Reversing the court below the Supreme Court of Florida (March 15, 1932) holds valid the new Florida franchise tax act (Chapter 14677, as amended by Chapter 15726, Laws of 1931) to the extent of the provisions thereof consideration of which was before the court. A digest of the decision below appeared in The Corporation Journal for March, 1932, at page 138. There, we said, inter alia: "The act calls for annual returns by domestic and foreign corporations and the payment by them of annual franchise taxes based on capital stock. * * * Another reason for holding the act invalid, is, so reads the opinion: 'The Act is a discriminatory measure in that it requires the fee to be paid by corporations having par value stock upon the basis of the par value of the stock, while corporations with no par value stock are permitted

to show the actual value thereof as the basis of the fee to be paid by them.'" The act provides that for the purposes of the tax no par value stock shall be deemed to have a value of $100.00 per share at least; that this presumption may be overcome by proof; and that the Secretary of State may increase or decrease the value as he may determine from the proofs. The Supreme Court calls attention to the "practical and very important differences between the two classes of stock," and then says: "As to legal incidents and practical application of the two kinds of stock, these differences afford ample basis for classification of them for purposes of taxation." There is no showing in the bill that the Secretary of State has exercised or intends to exercise the authority given him to increase or decrease the presumptive value of no par value stock; the complainant, having par value stock only "has not raised and cannot raise" the question of the constitutionality of the provision giving to the Secretary of State this power; if unconstitutional, the effect would be, merely, to eliminate this particular provision leaving the rest of the act intact: "as against the complaint made in this case, that question not being properly before us, we leave open and decline to express any view * * *. The general rule so promulgated measures the excise on par value and no par value corporations in a reasonable manner. It is grounded on experience and is an approximation to equality and works no disparity between the two classes of corporations. The maximum ($1000) imposed is reasonable and affects all corporations alike." Gray vs. Central Florida Lumber Co., Commerce Clearing House Court Decisions Reporting Service, Requisition No. 62500. Baker & Baker, and Martin Sack, all of Jacksonville, for appellee.

South Carolina.

Application of law imposing a sales tax on gasoline to that used by planes in interstate commerce held warranted. South Carolina imposes a 6¢ per gallon tax on the sale of gasoline; an air transportation company, a Delaware corporation, operates its planes across the state, in interstate commerce; planes make four regular stops in state; intrastate commerce in South Carolina is not transacted. At page 90 in The Corporation Journal for January, 1932, we reported the decision of the United States District Court, E. D. of S. C. (52 F. (2d) 456) refusing to grant an interlocutory injunction restraining the state authorities from collection of any tax to the extent of oil sold to the transportation company for use in its planes. It was unavailingly contended that such tax imposes a burden on interstate commerce in violation of the commerce clause of the United States Constitution. The tax is on the sale, in South Carolina, of gasoline; while the use or intention to use the gasoline in interstate commerce after the purchase has been made gives or may give to the gasoline the character of an instrumentality in interstate commerce after the sale has been effected the purchased gasoline did not have such character at the time of the sale,—and it is the sale that results in the tax.

The United States Supreme Court affirms the decree below denying the interlocutory injunction. Eastern Air Transport, Inc. vs. S. C. Tax Commission, U. S. Supreme Court, Docket No. 504, October Term, 1931, decided March 14, 1932.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

The Quaker Oats Company
North American Aviation, Inc.
Universal Chain Theatres Corp.
New York Air Brake Company
Gulf States Steel Company
National Dairy Products Co., Inc.
Niles-Bement-Pond Company
Winchester Repeating Arms Co.
American Light & Traction Co.
H. M. Byllesby and Company
Gotham Knitbac Machine Corp.
Godchaux Sugars, Inc.
Freeport Texas Company
American Ice Company
The Vogue Company
P. Lorillard Company
The A. C. Gilbert Company
Drug Incorporated
Pratt & Whitney Company
Shell Pipe Line Corporation
Liggett and Myers Tobacco Co.
American Steel Foundries
Utility and Industrial Corp.
Kelsey Hayes Wheel Corporation
Chicago Junction Railways & Union Stock Yards Company
United States & Foreign Securities Corporation
United States Dairy Products Corporation
Transcontinental Air Transport, Inc.

Some Important Matters for May and June

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Return of Information at the Source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic Companies having capital stock.

FLORIDA—Annual List of Officers and Directors due on or before June 1. —Domestic and Foreign Corporations.

ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1 but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due between June 1 and June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax Report (under Art. 9-A, Tax Law —Form 3-IT) due on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual Report to determine amount of franchise tax due July 1.—Foreign Corporations.

OREGON—Annual Statement due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before July 1.—Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1. —Domestic and Foreign Corporations.

UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

WISCONSIN—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Amendments to Delaware Corporation Law, 1931. Gives the full text of those parts of the law amended, indicating by brackets the matter repealed and by italics the new matter added.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930.) A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

Mob Law